United Nations A/C.3/63/SR.27

General Assembly
Sixty-third session

Official Records

Distr.: General
5 December 2008

Original: English

Third Committee

Summary record of the 27th meeting
Held at Headquarters, New York, on Monday, 27 October 2008, at 3 p.m.

Chairman: Mr. Majoor ..... (Netherlands)
later: Mr. Peralta (Vice-Chairman) ..... (Paraguay)
later: Mr. Majoor (Chairman) ..... (Netherlands)

Contents

Agenda item 64: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

08-56844 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 64: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/63/263, A/63/270 and A/63/286)

1. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons), introducing his report (A/63/286), said that the submission of his current report coincided with the tenth anniversary of the Guiding Principles on Internal Displacement. In October 2008, a high-level international conference had been held in Oslo, Norway, to take stock of the achievements over the past decade owing to the Guiding Principles. Those Principles had empowered internally displaced persons all over the world, had made Governments aware of their responsibilities vis-à-vis internally displaced persons and helped them to carry out their obligations in that regard, and had also made regional organizations aware of the responsibilities that countries in their region faced in dealing with internal displacement.

2. The Guiding Principles had informed the work of international humanitarian agencies, both during emergencies and during early recovery and reconstruction. They had proven useful in coping with the protection needs of persons displaced by natural disasters; and finally, they had provided useful guidance in fostering peace and peacebuilding processes.

3. In addition to the country visits described in his report, he had made four other visits during the past year. In September, as follow-up to his mission to Sri Lanka in 2007, he had participated in a national consultation on durable solutions for persons displaced in that country as a result of the armed conflict. He had been greatly encouraged that the Government had expressed its firm commitment to finding durable solutions for those who had been displaced for many years, in particular displaced Muslims from the North.

4. Durable solutions would also be necessary for those currently displaced in the Vanni region. He called on the Government of Sri Lanka to do everything possible to ensure that humanitarian agencies could provide assistance to all civilians in need and on all parties to the conflict to scrupulously respect international humanitarian law in the course of the ongoing military operations, including those provisions relating to the conduct of hostilities and safe passage for civilians.

5. When he had visited the eastern part of the Democratic Republic of the Congo in February, the Conference for Peace, Security and Development in North and South Kivu, held in Goma in January 2008, had offered a genuine opportunity for stability and political dialogue. The dramatic deterioration of the situation in North Kivu over the past weeks, however, had caused him great consternation. He, therefore, called on all actors concerned to halt attacks on and violence against the civilian population and to reaffirm their commitment to the Goma peace process.

6. He had just returned from a short visit to Nairobi in follow-up to his earlier visit to Kenya in May. He was pleased that relevant actors had reported that the humanitarian situation for those displaced by the post-election violence was improving, but he was concerned that important problems remained. More needed to be done to implement a real reconciliation and transitional justice process on the ground. Realizing durable solutions in return areas and for those who were unable or unwilling to return to their previous homes required a sustained commitment on the part of the Government and the international community. He, therefore, called upon donors to continue supporting critical early recovery activities in Kenya.

7. In late September, he had undertaken a mission to Georgia. The visit had shown that, after the end of the emergency phase, the challenge was to create conditions allowing all internally displaced persons to resume normal lives. That was necessary not only for those who had been displaced from areas adjacent to South Ossetia and had returned since the withdrawal of Russian troops, but also for those displaced from South Ossetia who were unlikely to return in the near future. He welcomed the fact that the Government had started to build houses for them, but they also needed to be provided with economic opportunities.

8. The biggest challenge was to integrate the roughly 220,000 persons displaced in the early 1990s by implementing the action plan adopted by the Georgian Government in July 2008. Integration efforts should encompass the whole range of civil, cultural,

economic, political and social rights of internally displaced persons. He welcomed the commitment of the Government and the strong support pledged to Georgia by donors during the previous week to implement the action plan. At the same time, he was concerned that a recently adopted law "on occupied territories" might seriously affect humanitarian access to Abkhazia and South Ossetia and even hinder the return of displaced persons.

9. He had wanted to visit Somalia, but had been unable to do so because of its security situation. There had been a dramatic increase there in the number of internally displaced persons since the beginning of 2008 and a drastic deterioration of the conditions in which they survived. Poor rainfall and economic shocks had only compounded the primary cause of displacement in 2007 and 2008, namely, the conflict between insurgent forces and the Transitional Federal Government, the latter supported by the Ethiopian National Defence Force.

10. Violations of international human rights and humanitarian law by all parties to the conflict in Somalia were the main factors that had induced people to leave their homes. The abuses took place in an environment of total impunity and collapse of law and order, where perpetrators were not held accountable for their actions. While some aid was still getting through to the internally displaced persons, in 2008 Somalia had witnessed the highest number of killings and kidnappings of aid workers in the world. To address the causes of displacement, improve humanitarian access and thereby provide the basis for durable solutions, the international community needed to engage more seriously in establishing mechanisms that could end the violence and hold the parties to the conflict accountable for their actions.

11. **Mr. Vigny** (Switzerland) noted the growing acceptance and implementation of the Guiding Principles on Internal Displacement by States and regional organizations and said that the United Nations system should support those efforts, in particular by affected States. His delegation welcomed innovative initiatives aimed at finding durable solutions for displaced persons and involving the displaced themselves in defining those solutions, which was particularly important in the context of peacebuilding. It also welcomed the attention devoted by the Representative to climate change as a cause of displacement. He wondered whether the Representative had encountered any particular challenges in promoting acceptance of the Guiding Principles. Lastly, given that there were situations where aid workers had difficulty gaining access to civilian and displaced populations, he asked whether the Representative had any suggestions on how to ensure humanitarian access.

12. **Ms. Walker** (Canada) said that her country had welcomed the recent visit of the Representative to Canada in February 2008 and the increasing acceptance of the Guiding Principles at the national and regional levels. It was, however, important to identify any gaps in efforts to meet the needs of the displaced and develop measures to address those problems. Her delegation had concerns relating to humanitarian access to affected populations, in particular in the Vanni region of Sri Lanka, from which humanitarian agencies had withdrawn. She asked whether the Representative had raised that issue during his consultations with the Government of Sri Lanka.

13. **Ms. Basso** (France), speaking on behalf of the European Union, commended the Representative for his efforts to promote dialogue with stakeholders and increase cooperation with the Peacebuilding Commission and asked what the Representative's expectations were in that regard. She also enquired whether he had any suggestions on how to promote wider implementation of the Guiding Principles and on how to ensure that displaced persons made a free and informed choice with regard to return to their place of origin.

14. **Mr. Shingiro** (Burundi) welcomed the Representative's involvement in efforts to promote peace in the region. He was concerned that the need to provide funding for displaced persons was often forgotten in peacebuilding efforts; there was a funding gap between the initial humanitarian response and later long-term development efforts. He wondered whether the Representative had any suggestions on how to ensure that vulnerable and displaced populations received the uninterrupted assistance that they needed.

15. **Mr. Garayev** (Azerbaijan) stressed his Government's commitment to implementing the Guiding Principles. He suggested that the Representative should include the International Office for Migration in his efforts to promote dialogue with international and regional humanitarian actors and commended him for his efforts to take into account the issue of climate change and populations displacement.

He noted the constructive dialogue with the Representative during his mission to Azerbaijan in April 2007 and stressed his Government's commitment to implementing the recommendations contained in the report of the Representative on that mission (A/HRC/8/6/Add.2). His Government recognized that it bore primary responsibility for those displaced by continued foreign occupation of its territory and had allocated nearly $500 million to assist displaced persons and refugees and cooperated closely with the Office of the United Nations High Commissioner for Refugees (UNHCR).

16. The Representative had noted in his report that the efforts of the Azerbaijani Government compared very favourably with the responses of other Governments dealing with similar situations. The last tent camp had been closed and new housing had been provided near the areas from which the displaced had fled with a view to ensuring a smooth return once the foreign occupation ended. Efforts continued to improve the living conditions of the displaced and include them in development and employment programmes. Azerbaijan looked forward to a peaceful resolution to the foreign occupation and the return of the displaced and pledged continued cooperation with the Representative.

17. **Mr. Muita** (Kenya) said that Kenya had received many persons displaced by conflicts in the region while post-election violence had also displaced large numbers of people. His Government was committed to meeting the needs of those groups in cooperation with the United Nations system and bilateral partners. He stressed the importance of ensuring that the current power-sharing agreement succeeded in promoting accommodation and reconciliation.

18. **Mr. Maxwell** (Sri Lanka) noted the role played by the Representative in meeting the needs of displaced populations in Sri Lanka and reaffirmed his Government's commitment to guaranteeing humanitarian access to the Vanni region. In cooperation with United Nations and humanitarian agencies, weekly deliveries were made to internally displaced persons in that region, despite the activities of the Liberation Tigers of Tamil Elam (LTTE). His Government would continue to meet the needs of the displaced until such time as they could be resettled.

19. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons) said that a normative framework for the full implementation of the Guiding Principles must be established. Since they were non-binding, they must be incorporated into domestic law; that was why he had worked with stakeholders to develop a manual for law and policymakers to support Governments' efforts in that regard. There must also be sufficient political will to implement the Guiding Principles; he therefore welcomed the International Conference of the Great Lakes Region Protocol on the Protection of and Assistance to Internally Displaced Persons and the proposed African convention on internally displaced persons. The capacity of humanitarian actors and donors must also be reinforced.

20. As for the issue of humanitarian access, many factors came into play, not only in the Vanni region of Sri Lanka, but in general. Logistics could be a problem, for example, in remote areas; more material and equipment should be made available. In areas where security was poor there should be negotiations with all parties to ensure safe humanitarian access. Even in situations where Governments were reluctant to allow direct contact with non-State actors, in areas where there were forces beyond the control of the Government, providing aid to the victims of conflict must be the priority. In cases where there did not seem to be the necessary political will to ensure humanitarian access, the international community must send a clear signal that States had an obligation to protect vulnerable populations and guarantee humanitarian access.

21. He said that he would continue to work with the Peacebuilding Commission with regard to the situation in specific countries, would undertake missions and would contact the countries concerned with regard to the Commission's specific recommendations in order to ensure that displaced populations received the assistance that they required. Turning to the issue of the return of displaced persons, he said that it was essential to provide all possible information to displaced persons so that they were aware of their options and could make free and informed choices. Peace agreements must likewise make it clear that the return of displaced persons should be on a voluntary basis only.

22. He agreed that the needs of displaced persons were often forgotten in the gap between the initial humanitarian response to an emergency and later development and reconstruction efforts. The resentment felt by displaced persons at apparently

being abandoned, unable to rebuild their lives, could threaten peacebuilding efforts. Funding mechanisms must therefore be revisited with a view to ensuring uninterrupted funding for displaced persons in the crucial period between the initial humanitarian response to a crisis and subsequent long-term development efforts.

23. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), introducing the interim report prepared by his predecessor (A/63/263), said that one of the key issues addressed in it was that of the responsibilities of pharmaceutical companies in respect of their obligations to the right of health. He fully agreed with his predecessor's approach to the problem.

24. He intended to ensure the continuity of the mandate of the Special Rapporteur by following up on the work of his predecessor and focusing on the importance of accountability, the need for monitoring the implementation of health-related policies, the role of health indicators, and issues relating to maternal mortality. In addition, he would address several other challenges and issues. From his experience as an HIV/AIDS advocate in India, he had learned the importance of involving rights-holders themselves in decision-making, and he would involve them in his work as Special Rapporteur. He would hold consultations with all relevant stakeholders, drawing different groups together, increasing awareness about subjects of common interest and facilitating collaboration.

25. Among the themes that he would look into in greater depth, he was considering subjects such as health systems, intellectual property and the effects that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and TRIPS plus standards had on the ability of States to implement the right to health, as well as issues relating to women and violence, and indigenous communities in the context of the right to health.

26. Section III of the report, discussed accountability as a central aspect of human rights, since it provided individuals and communities with an opportunity to understand how duty-bearers discharged their roles. It also addressed the fact that, while human rights demanded accountability, that did not mean that everyone working in the field of health or human rights had the task of holding duty-bearers to account. Section III went on to discuss two forms of accountability: judicial and administrative.

27. Section IV of the report dealt with the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines and set out the human rights responsibilities of pharmaceutical companies. The Guidelines, contained in the Annex to the report, dealt with issues such as transparency, management, accountability, patents, licensing and pricing. They were consistent with and complementary to the helpful analysis recently provided by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

28. Since almost all the reports submitted by the Special Rapporteur so far had addressed the obligations of States, it was only appropriate that obligations of non-State actors, such as pharmaceutical companies, should also be considered. When discussing State obligations regarding the progressive realization of the right to health, public officials had often mentioned that practices and policies of some pharmaceutical companies constituted an obstacle to State implementation of the right to health and endeavours to enhance access to medicines. They had also underlined the indispensable role that pharmaceutical companies played in regard to access to medicines and had recognized constructive approaches taken by some companies.

29. The Guidelines had been prepared with a view to developing the interpretation of internationally recognized human rights standards and, in particular, to providing practical, constructive and specific guidance to pharmaceutical companies and other interested parties, including those who wished to monitor companies and hold them accountable. The Guidelines provided a framework to help pharmaceutical companies integrate human rights, including the right to health, into their strategies, programmes, and activities. They addressed, among other issues, the need for companies to pay attention to the needs of disadvantaged populations, demonstrate transparency and accountability, and respect the right of countries to use TRIPS and TRIPS flexibilities in promoting access to medicines.

30. **Ms. Walker** (Canada) said that her delegation agreed that the Special Rapporteur's report should be

considered by the World Health Assembly and the World Health Organization Executive Board because it addressed critical health and human rights issues. Given that the right to health was a shared responsibility that involved both State and non-State actors, it would be interesting to know whether there were any plans for discussions with pharmaceutical companies within the framework of the Human Rights Guidelines referred to.

31. **Ms. Duncan-Lira** (United States of America) noted that there was no international consensus on the nature, scope and obligations of the right to health. Each country had established its own obligations in accordance with national policies; it was therefore difficult to establish guidelines that would suit each and every country. While there was no doubt that pharmaceutical companies must respect the rule of law and ensure the production of effective, safe medicines, they were primarily accountable to shareholders and their aim was to generate profit. However, the revenue generated by successful companies could then be channelled into useful research.

32. **Ms. Farani Azevedo** (Brazil) said that there were a number of issues that her delegation would like the Special Rapporteur to take into consideration during his mandate. First, health issues must take precedence over trade. Secondly, intellectual property right issues must not represent an obstacle for the provision of medicine to the sick and needy. Thirdly, it was essential to provide adequate capacity-building to countries in order to enable them to attain sustainable development and lasting health solutions. Finally, it was important to ensure a proportionate use of funds and to strike a balance between transfer and technology and the provision of capacity-building.

33. **Ms. Basso** (France) asked whether the Special Rapporteur would follow up on the issues identified by his predecessor in the report, especially the fact that the obligations under international law concerning the right to health were subject to maximum available resources (para. 54). In addition, her delegation would appreciate clarification of the action that would be taken on the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines.

34. **Mr. Kennedy** (New Zealand) said that it would be interesting to receive additional information on the emphasis that would be given to the availability and quality of maternal health issues.

35. **Mr. Grover** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that he would follow up on most of the issues considered by his predecessor. For example, he would continue the practice of holding consultations aimed at developing further the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines and would follow up on his predecessor's work on maternal mortality. In addition, it would also be necessary to continue work on accountability, transparency, monitoring and indicators. Empowerment of marginalized communities in relation to the right to health would also be mainstreamed in every document.

36. It was especially important to continue the discussions on the Human Rights Guidelines and to reach a consensus on that issue because a large proportion of the world's poor did not have access to basic and essential health services. Further discussions would also be necessary on the relationship between the right to health and trade agreements, though it should be noted that there was a consensus among the international legal community that trade agreements did not have primacy over the right to health. In that connection, his predecessor had held non-State actors to account in respect to the right to health.

37. Finally, he hoped that he would be able to take up the question of the obligations under international law concerning the right to health that were subject to maximum available resources. As a general principle, he would hold consultations with the stakeholders involved in the right to health, including Member States and government officials, civil society and non-governmental organizations.

38. **Mr. Ruggie** (Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises) said that his mandate addressed closing the gaps between the impact of economic forces and actors, on the one hand, and the capacity of societies to manage their adverse consequences, on the other. Such gaps provided a permissive environment for wrongful acts by companies, without adequate sanctions or reparations.

39. In June 2008, the Human Rights Council had unanimously welcomed the policy framework of "protect, respect and remedy" proposed by the Special

Representative during his earlier mandate and had extended it for three years, asking him to operationalize the framework to provide concrete guidance to States and business. In contrast to the previous divisive debates on the subject, a new consensus had formed, with the framework endorsed by the main international business associations and leading international human rights organizations. It had also been invoked by national authorities.

40. The mandate had convened 14 multi-stakeholder consultations on five continents to assess the nature of the challenges and possible solutions. The Special Representative had met personally with indigenous peoples' groups, workers in global supply chains and labour leaders whose colleagues had been killed by paramilitaries protecting company assets. The mandate had analysed nearly 400 public allegations against companies, followed dozens of court cases and compiled a comprehensive mapping of international standards and practices currently governing business and human rights, ranging from criminal law to voluntary initiatives by firms.

41. The "protect, respect and remedy" framework comprised three core principles. The first principle was the State duty to protect against human rights abuses by third parties, including business. The second was the corporate responsibility to respect human rights, which meant acting with due diligence to avoid infringing rights. The third principle involved providing greater access for victims to effective remedies.

42. In regard to the first principle, Governments were the most appropriate entities to make the decisions required to reconcile different societal needs. However, most Governments took a narrow approach to managing the business and human rights agenda, often keeping human rights concerns apart from other business policy domains. That contributed to governance gaps and was replicated at the international level. Governments needed to encourage a corporate culture respectful of human rights and consider human rights impacts when signing trade and investment agreements and providing export credit or investment guarantees for overseas projects where the risk of human rights challenges was known to be high.

43. The second principle was the corporate responsibility to respect human rights. Most companies did not have systems in place to support the claim that they respected human rights. A due diligence process was required so that companies could become aware of, prevent and address adverse human rights practices. Access to remedy was the third principle. Access to formal judicial systems was often most difficult where the need was greatest, and non-judicial mechanisms were seriously underdeveloped.

44. Under the State duty to protect, the Special Representative would explore the use of corporate law tools to promote corporate cultures which respected rights and, in particular, ways to address the human rights challenges related to business operations in conflict zones. He planned to develop a set of guidelines for companies on due diligence and accountability measures. The workplan included exploring ways of overcoming obstacles to access to judicial remedy and identifying promising non-judicial remedies. As part of his work to promote the framework, the Special Representative had established working relationships with various United Nations bodies and other international organizations and had convened an experts group composed of eminent individuals from various sectors and regions of the world.

45. **Mr. Michelsen** (Norway) expressed his country's full support for the policy framework developed by the Special Representative. Further elaboration of the State duty to protect against corporate abuse in conflict zones would be welcome, particularly in reference to the Democratic Republic of the Congo.

46. **Ms. McGeeney** (United States of America) said that some countries had expressed concerns that incorporating human rights into the economic sector could limit their development. She requested the Special Representative's views on such concerns.

47. **Ms. Basso** (France) asked for further information on the experts group and also wished to know in what framework the consultations on the guidelines for companies currently being developed would be held. Additional details on cooperation with other United Nations organizations, in particular, the International Labour Office, would be appreciated as well.

48. **Mr. von Kaufman** (Canada) asked what the international community could do to build the human rights capacity of States with fragmented or non-existent policies in that area.

49. **Mr. Ruggie** (Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises) said that there was a Human Rights Council resolution which urged the Democratic Republic of the Congo to engage with a number of its special procedures, including his mandate, in a capacity-building mode. He had begun discussions with the Democratic Republic of the Congo. It would be unreasonable to claim that the human rights regime as designed could be expected to function in a country torn apart by civil war or other strife. Therefore, the international community must come up with innovative measures for such circumstances.

50. Companies and countries had requested greater clarity and capacity-building support to help them avoid the dilemmas which arose in such situations. An initial examination of the situation in the Democratic Republic of the Congo that was likely to begin soon would result in innovative policy recommendations for the international community on how to deal with the extraordinarily difficult issues raised by business operations in conflict zones.

51. Incorporating human rights into the economic sector did not hinder development. In fact, the reverse was true. The ability to enjoy economic and social rights was an indication of successful development. Development and rights indeed were inextricably connected. He had convened the experts group in order to receive the best possible advice. The mandate was a complex and delicate one. The purpose of the group was to help avoid major mistakes, provide recommendations and push the mandate forward. Its members were drawn from the United Nations, corporations, human rights organizations and national Governments. Not a single person approached had declined to participate, which was an indication of the importance of the mandate.

52. He expected that the regional consultations would continue in various regions of the world. There would be consultations with international corporate lawyers on a range of international corporate law tools. There was no reason to rewrite international labour standards; the mandate would draw on the extensive work already done by the International Labour Organization. Capacity-building was two-pronged, involving both horizontal and vertical aspects. First, the business and human rights agenda must be taken out of the narrow conceptual and institutional box where it had been confined. People involved in commercial policy, corporate governance and investment policy must understand human rights, which must not be limited to specialists working in ministries. That would require capacity-building.

53. At some recent consultations, it had become apparent that human rights specialists and businesspeople themselves did not understand where their fields overlapped, or indeed that they overlapped at all. One outcome of that meeting had been that human rights experts and businesspeople from the same capitals had met for the first time and had discussed their shared concerns regarding the impact of business on human rights. The vertical aspect involved clarification of standards, determining which approaches were effective and dissemination and adoption of best practices.

The meeting rose at 5.05 p.m.